

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ARCELOMITTAL PLATE LLC, <i>et al.</i> ,)	
<i>Plaintiffs,</i>)	Case No. 19-13527-LVP-APP
v.)	
LAPEER INDUSTRIES, INC., <i>et al.</i> ,)	Hon. Linda V. Parker
<i>Defendants.</i>)	
<hr/>		
HOWMARK, LLC,)	Mag. Anthony P. Patti
<i>Third-Party Plaintiffs,</i>)	
v.)	
DANIEL SCHREIBER, et al.,)	
<i>Third-Party Defendants.</i>)	

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MOTION FOR ORDER OF DISMISSAL

Pursuant to Federal Rule of Civil Procedure 41(a)(2), Plaintiffs ArcelorMittal Plate LLC and ArcelorMittal USA, LLC (collectively, “ArcelorMittal”) moves this Court for an order dismissing the remaining claims¹ between or among ArcelorMittal and Defendants S&S Holdings, LLC (“S&S”), Brentwood Advisory Group, LLC (“Brentwood”), Howmark, LLC (“Howmark”) and Third-Party Defendants Daniel Schreiber and Daniel C. Schreiber Revocable Trust dated 4/11/01 (collectively “Schreiber,” and together with ArcelorMittal, S&S, Brentwood, and Howmark, the “Settling Parties”).² The Parties have resolved their differences and entered into a settlement agreement.

¹ ArcelorMittal’s claims against Howmark were dismissed on May 5, 2021. (ECF No. 121.)

² Defendant Lapeer Industries, Inc.’s bankruptcy case has been dismissed and has no assets. (See 5/6/2021 Minute Entry (dismissing case) (E.D. Mich. Bankr., Case No. 20-48744-mlo).)

Pursuant to Magistrate Judge Anthony P. Patti's order (*see* March 23, 2021 Minute Entry), counsel for ArcelorMittal attempted to obtain consent from counsels for S&S, Brentwood, Schreiber and Howmark³ to file a stipulation of dismissal and proposed order by June 1, 2021. However, counsel for S&S, Brentwood and Schreiber refused to provide consent.

Accordingly, ArcelorMittal files this Motion.

Dated: June 1, 2021

s/ Ashleigh J. Morpeau
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³ Howmark's counsel timely responded to ArcelorMittal's request to for consent to file a stipulation and order of dismissal.

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BRIEF IN SUPPORT OF MOTION FOR ORDER OF DISMISSAL

STATEMENT OF ISSUES PRESENTED

1. Should the Court enter an order dismissing ArcelorMittal's claims against Brentwood and S&S (as outlined in the First Amended Complaint (ECF No. 18)), respectively, and Howmark's claims against Schreiber (as outlined in the Third-Party Complaint (ECF No. 35)) where the parties executed a settlement agreement?

Plaintiffs' Response: Yes.

2. Whether the language of the Proposed Order for Dismissal is proper where the Proposed Order seeks to keep this matter open against Lapeer, which has been dismissed from bankruptcy?

Plaintiffs' Response: Yes.

CONTROLLING AUTHORITY

Fed. R. Civ. P. 41

Grover by Grover v. Eli Lilly & Co.,
33 F.3d 716, 718 (6th Cir. 1994)

Bridgeport Music, Inc. v. Universal-MCA Music Publ'g, Inc.,
583 F.3d 948 (6th Cir. 2009)

In re Banks,
No. 17-11968, 2018 WL 1088072 (E.D. Mich. Feb. 26, 2018)

BACKGROUND

Plaintiffs ArcelorMittal Plate LLC's ("ArcelorMittal Plate") and ArcelorMittal USA LLC's ("ArcelorMittal USA") (collectively, "ArcelorMittal") Motion should be granted. On March 22, 2021, ArcelorMittal and Defendants S&S Holdings, LLC ("S&S"), Brentwood Advisory Group, LLC ("Brentwood"), Howmark, LLC ("Howmark") and Third-Party Defendants Daniel Schreiber and Daniel C. Schreiber Revocable Trust dated 4/11/01 (collectively "Schreiber," and together with ArcelorMittal, S&S, Brentwood, and Howmark, the "Settling Parties") engaged in a settlement conference before Magistrate Judge Anthony P. Patti. (Ex. 1.) During this conference, the Settling Parties were able to resolve (1) the issues raised in the First Amended Complaint (ECF No. 18) by ArcelorMittal and against Brentwood, S&S and Howmark, respectively, and (2) all the issues raised in the Third-Party Complaint (ECF No. 35) between Howmark and Schreiber. (*See Id.*) Magistrate Judge Patti ordered that the Settling Parties file "their final stipulated orders, dismissing all claims by and against all parties, with prejudice, by June 1, 2021." (*Id.*)

By April 29, 2021, the Settling Parties executed a Settlement and Mutual Release Agreement⁴ (the "Settlement Agreement"), which sets forth the terms of

⁴ The Settlement Agreement contains a confidentiality clause. ArcelorMittal will submit a copy of the Settlement Agreement to the Court for review *in camera* upon request.

their settlement. After receiving Howmark's final settlement payment due under the Settlement Agreement, ArcelorMittal and Howmark filed a stipulation to dismiss ArcelorMittal's claims against Howmark, and an order of dismissal was entered on May 5, 2021. (ECF No. 121.)

Having confirmed receipt of Schreiber's final settlement payment, counsel for ArcelorMittal circulated a proposed stipulation and proposed order (the "Proposed Order"), which would (1) dismiss the remaining claims between and among the Settling Parties; and (2) keep this matter open against Defendant (former bankruptcy debtor) Lapeer Industries, Inc. ("Lapeer"). (Ex. 2 at 7; Ex. 3 at 2, 6.)

Counsel for Howmark timely agreed to both the stipulation and Proposed Order. (*Id.* at 1.) However, counsel for S&S, Brentwood and Schreiber has failed to indicate whether these defendants consent to the proposed stipulation and Proposed Order. (*Id.*) Strangely, it appears consent is being withheld due to a dispute as to the effect of Lapeer's dismissal from bankruptcy. (*See Id.* at 2-5.) Yet, the law (and the bankruptcy court's order (*see* Ex. 4)) makes clear that the automatic stay against Lapeer is lifted and this matter should remain open as to Lapeer.

Thus, the Proposed Order should be entered.

ARGUMENT

The terms of the Proposed Order are proper and warrant entry. An action may be dismissed at the plaintiff's request by court order, on terms that the court considers

proper. Fed. R. C. P. 41(a) (2). “Whether dismissal should be granted under the authority of Rule 41(a)(2) is within the sound discretion of the district court.” *Grover by Grover v. Eli Lilly & Co.*, 33 F.3d 716, 718 (6th Cir. 1994) (citations and quotations omitted). The primary purpose of this Rule imposing the requirement of court approval is to protect the nonmovant from unfair treatment. *Id.* In the context of Rule 41(a)(2), an “abuse of discretion is found only where the defendant would suffer ‘plain legal prejudice’ as a result of a dismissal without prejudice.” *Bridgeport Music, Inc. v. Universal-MCA Music Publ’g, Inc.*, 583 F.3d 948, 953 (6th Cir. 2009) (citation omitted).

Here, the remaining claims among and between the Settling Parties are being sought to be dismissed *with prejudice* pursuant to the terms of the Settlement Agreement. Thus, neither S&S, Brentwood nor Schreiber will suffer “plain legal prejudice” upon the entry of the Proposed Order.

Furthermore, ordering that this matter remain open as to Lapeer is required under applicable law. Lapeer has been dismissed from bankruptcy upon a *joint motion* by Lapeer and Official Committee of Unsecured Creditors, and the automatic stay against it has been lifted. (Ex. 4.) Indeed, an “automatic stay does not survive the dismissal of a bankruptcy petition. . . . Once a bankruptcy petition has been dismissed, the debtor cannot challenge the decision to lift the automatic stay. . . .” *In re Banks*, No. 17-11968, 2018 WL 1088072, at *2 (E.D. Mich. Feb. 26, 2018)

(citations and quotations omitted). Any objection to this matter remaining open as to Lapeer is baseless.

CONCLUSION

For the foregoing reasons, ArcelorMittal respectfully requests that this Court grant its motion for entry of an Order of Dismissal as outlined in the Proposed Order contained in Exhibit 2, and an such other and further relief as the Court deems just and proper.

Dated: June 1, 2021

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of June, 2021, I electronically filed the foregoing *PLAINTIFFS' MOTION FOR ENTRY OF ORDER OF DISMISSAL* with the Clerk of the Court, which will send notification of such filing to the counsel of record utilizing the Court's CM-ECF system.

/s/ Ashleigh J. Morpeau
One of the Attorneys for Plaintiffs